United Nations S/2005/161

Security Council

Distr.: General
15 March 2005

Original: English

Letter dated 22 February 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 19 October 2004 (S/2004/855). The Counter-Terrorism Committee has received the attached fourth report from Switzerland submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Andrey I. **Denisov**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

05-27801 (E) 250405 270405

Annex

[Original: French]

Letter dated 7 February 2005 from the Permanent Representative of Switzerland to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

With reference to your letter of 18 October 2004, I have the honour to transmit to you, enclosed herewith, my Government's replies to the Counter-Terrorism Committee's questions concerning the third Swiss report of 12 September 2003 (see enclosure).

(*Signed*) Peter **Maurer**
Ambassador

Enclosure

[Original: French]

Report on counter-terrorism of 19 December 2001 submitted by Switzerland to the Security Council Committee established pursuant to resolution 1373 (2001)

Replies to the Committee's additional questions concerning the third Swiss report of 12 September 2003

Fourth report

In italics: extracts from the letter of 18 October 2004 from the Chairman of the Counter-Terrorism Committee (CTC)

1. Implementation measures

In responding to questions in this section, States are not expected to provide information about ongoing investigations or judicial processes, if to do so would prejudice the proper conduct of such processes.

I. Regarding the criminalization of terrorist financing and the prosecution of offenders

1.1 *The CTC would appreciate it if Switzerland would confirm that the various pieces of legislation related to terrorism and adopted by the Swiss Parliament in March 2003 (third report, S/2003/967, p. 5) are now in force and in the same form as outlined in the third report?*

The penal provision penalizing the financing of terrorism, article 260 quinquies of the Swiss Penal Code (www.admin.ch/ch/f/rs/311_0/a260quinquies.html), entered into force on 1 October 2003. The same goes for the provisions penalizing companies, namely, article 100 quater and quinquies of the Penal Code. These provisions are reproduced in the annex to Switzerland's third report to the Committee (S/2003/967).

1.2 *The CTC noted that a new provision in the Swiss Penal Code (article 260 quinquies, para. 3) constitutes a political exception for the prosecution of terrorist acts. This provision does not appear to be in accordance with article 6 of the International Convention for the Suppression of the Financing of Terrorism, nor with parts of the preamble and paragraph 3 (g) of Security Council resolution 1373 (2001) (the Resolution). The CTC would like to be advised of any steps Switzerland intends to take in relation to this matter.*

- Origin of article 260 quinquies, paragraph 3, of the Swiss Penal Code

Article 260 quinquies of the Penal Code, which entered into force on 1 October 2003 following its adoption by Parliament on 21 March 2003, explicitly defines the offence of financing terrorism. This provision supplements article 260 ter of the Code, on organized crime, by making the provision of financing a separate offence for isolated individuals or loosely structured groups, who can thus be punished even where no terrorist act has been committed or attempted as yet.

The Government's original proposal concerning the offence of financing terrorism did not contain paragraph 3. It was added later during the parliamentary debate. Parliament feared that the new offence of financing terrorism might be used to criminalize the financing of resistance movements pursuing legitimate goals, campaigning for human rights and democracy, and battling dictatorships and totalitarian regimes. Parliament was, however, unanimous in stating that no legitimate goal can justify any act of violence.

The Swiss Government believes that article 260 quinquies, paragraph 3, of the Code is contrary neither to article 6 of the International Convention for the Suppression of the Financing of Terrorism nor to the preambular paragraphs or paragraph 3 (g) of Security Council resolution 1373 (2001). Article 260 quinquies, paragraph 3, of the Code does not justify the financing of terrorist acts. Its aim is to prevent the financing of an act from being characterized as a terrorist offence if that makes it possible to guarantee, in a balanced way, the most basic human rights. Accordingly, article 260 quinquies, paragraph 3, of the Code should be interpreted and applied in conformity with Switzerland's international legal obligations.

- Scope of application of article 260 quinquies, paragraph 3, of the Swiss Penal Code

Article 260 quinquies, paragraph 3, of the Code reads as follows:

> "An act shall not constitute financing of terrorism if it is intended to establish or re-establish a democratic regime or the rule of law or to enable the exercise or safeguarding of human rights."

(a) Relationship between the act of financing and the act for which financing is intended

The sole legal consequence of paragraph 3 is that the acts which it covers cannot be characterized as financing of terrorism under article 260 quinquies of the Penal Code. If the act of financing per se also contravenes other legal provisions (e.g., the Anti-Money Laundering Act or the law on military weapons), they remain applicable. Nor does the applicability of article 260 quinquies, paragraph 3, of the Code prejudge the assessment of whether the act of violence carried out or attempted, which is the object or purpose of the financing, is justified, since the assessment of such an act under penal law assumes that there has been a rebalancing of the legal goods to be protected and the legal goods undermined article 260 quinquies, paragraph 3, deals solely with the punishability of the act of financing.

(b) Relationship between the offence of financing terrorism (article 260 quinquies of the Swiss Penal Code) and other offences defined in the Code

Article 260 quinquies of the Penal Code supplements an earlier provision penalizing organized crime (article 260 ter of the Code, www.admin.ch/ch/f/rs/311_0/a260ter.html). If the financing is intended for a criminal organization (a category encompassing terrorist organizations), then punishability is assessed in the light of article 260 ter, which, unlike article 260 quinquies, paragraph 3, does not contain a saving clause. Furthermore, article 260 quinquies does not apply if it can

be proved that the financing was used to carry out or attempt a specific terrorist act. In that case, the provisions concerning the acts that have been committed (e.g., murder, hostage-taking, offences connected with explosives, etc.) are applicable. Article 260 quinquies of the Penal Code is a provision, therefore, the sole function of which is to fill a gap in order to provide punishment in cases where individual terrorists or loosely structured terrorist groups receive financial support without a terrorist act having occurred.

(c) *Ratio legis* of article 260 quinquies, paragraph 3, of the Swiss Penal Code

The scope of application of paragraph 3 is very narrow: the provision applies only where financing is intended to support acts aimed at restoring democracy and the rule of law in non-law-governed States with tyrannical regimes or to enable the exercise of human rights in States which systematically deny those rights. The example that comes to mind is the actions of the French Resistance against the Nazi regime and its collaborators during the Second World War or the fight against apartheid under the former regime in South Africa. In other words, paragraph 3 does not apply to financing which supports terrorist acts against civilians, civilian institutions, or institutions and representatives of democratic States which respect the rule of law. Recourse to violence is lawful only in situations of self-defence or where the author of the violent act is defending interests which must be accorded a higher importance than the interests that have been thwarted.

Swiss legislation is consistent with Declaration 109/02[1] (contained in European Union document 11532/02 of 22 August 2002) proclaimed by the Council of the Union in connection with the adoption of the European Union framework decision on the fight against terrorism.

(d) Review of conditions governing the application of article 260 quinquies, paragraph 3, of the Swiss Penal Code

It may be inferred from the concept of human rights and the rules of public international law on the responsibility of States that resistance is legitimate only under certain conditions. In order to determine whether article 260 quinquies, paragraph 3, of the Penal Code applies to a terrorism financing case, it must be ascertained whether some or all of the following conditions have been met:

[1] "The Council declares that the framework decision on the fight against terrorism concerns acts that are regarded by all States members of the European Union as grave infractions of their penal laws, committed by individuals whose objectives constitute a threat to their democratic societies, which are governed by the rule of law, and to the civilization on which these societies are based. That is the sense in which the decision should be understood and it cannot be asserted, based on this decision, that the conduct of those who acted to preserve or to re-establish democratic values, as was the case, for example, in some States members during the Second World War, can now be considered to come under the heading of 'terrorist acts'. Nor can it be used as a basis for accusations of terrorism against persons who are exercising their fundamental right to express their opinion, even if, in so doing, they commit infractions."

(1) **The financing was intended to establish or re-establish a democratic regime or the rule of law or to enable the exercise or safeguarding of human rights.** This assumes that the State in question practises or tolerates a policy of grave or systematic violation of basic human rights with regard to the entire population or major categories thereof. By definition, the saving clause of article 260 quinquies, paragraph 3, of the Penal Code does not apply to democratic States.

(2) **The financing was aimed against representatives of a non-law-governed regime responsible for the human rights violations referred to in subparagraph (1) by virtue of having ordered or committed them within its borders.** This means that the financing of acts of violence against civilians having no connection to the non-law-governed State excludes the application of article 260 quinquies, paragraph 3, of the Penal Code.

(3) **The financing was intended to prevent a specific human rights violation or to overthrow a regime which does not respect human rights in a given State.** This means that it was likely to establish or re-establish democracy and the rule of law or to enable the exercise or safeguarding of human rights. In this case, too, the financing of acts of violence against civilians having no connection to the non-law-governed State excludes the application of article 260 quinquies, paragraph 3, of the Penal Code.

(4) **The financing was necessary to establish or re-establish a democratic regime or the rule of law or to enable the exercise or safeguarding of human rights.** This means that there was no other less violent means of attaining that goal. It assumes that the State where the act was committed was devoid of institutionalized democratic processes permitting the expression of will and of legal protections against the human rights violations referred to in paragraph (1).

(5) **The financing intended to establish or re-establish a democratic regime or the rule of law or to enable the exercise or safeguarding of human rights was not disproportionate to the legal goods that were undermined.** The principle of proportionality is anchored in Swiss constitutional law. It must at all costs be implemented by the penal authorities, even if it does not expressly appear in the law. The same goes for the application of article 260 quinquies, paragraph 3, of the Penal Code, for that provision constitutes an exception to the protection rule embodied in paragraph 1. This means that the means employed must be proportionate. This condition is not met where the goal of the act financed is to create a public danger liable to injure or place in jeopardy an indeterminate number of persons not belonging to the non-law-governed regime responsible for the human rights violations referred to in paragraph (1). Nor does the financing of acts of violence constituting crimes against humanity fall within the scope of application of article 260 quinquies, paragraph 3, of the

Penal Code. With regard to extradition, article 3, paragraph 2 (b), of the Federal Act on Judicial Cooperation in Criminal Matters states clearly that the allegation that the offence is of a political nature is inadmissible where the act seems particularly reprehensible, in that its author has, for purposes of extortion or compulsion, placed or threatened to place in jeopardy the liberty, physical integrity or lives of individuals, in particular, by hijacking an aircraft, taking hostages or using weapons of mass destruction.

- Jurisprudence of the Swiss Federal Tribunal concerning article 260 quinquies, paragraph 3, of the Penal Code and allegations regarding the political nature of the offence in extradition cases

The established practice of the Swiss Federal Tribunal in extradition cases rests on the principle whereby an extradition request concerning an offence committed in the context of a political struggle for State power can be refused only if the violation of the legal goods in question is proportionate to the goals envisaged. Furthermore, the political goals pursued must be sufficiently important and legitimate for the act to seem at least somewhat comprehensible. What comes to mind is the use of illegal means against dictatorial regimes or those carrying out systematic human rights violations. In general, a political character cannot be attributed to serious violent crimes, such as assassination. There can, however, be exceptions to that rule in situations of all-out civil war or where the offence in question (for example, the assassination of a tyrant) constitutes the only practical means of attaining important humanitarian goals.

In its recent jurisprudence, the Federal Tribunal has also applied this reasoning in determining whether a wanted person is a suspected terrorist or an armed freedom fighter.

Pursuant to the consistent jurisprudence of the Federal Tribunal, highly dangerous terrorist groups are criminal organizations under article 260 ter of the Penal Code. On the other hand, extremist parties, opposition political groupings and organizations fighting for political power in their country or carrying on a freedom struggle against a dictatorial regime by appropriate (i.e., non-criminal) means cannot be regarded as criminal organizations.

The Federal Tribunal examined the question of terrorism and its financing in several recent decrees:

- Decree No. 1A.147/2004 of 13 September 2004: Relying on article 260 quinquies of the Penal Code, the Federal Tribunal states that judicial cooperation was rightly provided to the United States of America in a case involving a suspected financial backer of Al-Qaida.
- Decree Nos. 1S.3/2004 and 1S.4/2004 of 13 August 2004: The Federal Tribunal rejects the request to release a person incarcerated on grounds of suspected ties to Al-Qaida.
- Decree Nos. 1A.80/2004 and 1A.116/2004 of 8 July 2004: The allegation regarding the political nature of an offence is inadmissible for serious violent crimes (particularly assassination). An exception can be made only where the offence, for example, the assassination of a tyrant, is the only practical means of attaining important humanitarian goals. This practice also applies in making

the distinction between suspected terrorists and armed combatants who are members of a political resistance.

- Decree No. 1A.194/2002 of 15 November 2002: Al-Qaida is characterized as a terrorist organization. The Federal Tribunal approves the provision of judicial cooperation to the United States in a case involving a suspected financial backer of Al-Qaida.
- Decree No. 1A.174/2002 of 21 October 2002: Euskadi Ta Askatasuna (ETA) is characterized as a terrorist organization using disproportionate criminal means in the struggle for Basque Country independence.
- Decree No. 1A.159/2002 of 18 September 2002: The Red Brigades are characterized as a terrorist organization.

• Conclusions

In order for an act to fall within the scope of article 260 quinquies, paragraph 3, of the Penal Code, it must involve the financing of an act of resistance against a repressive regime, and the means used or the undermining of legal goods must be proportionate to the aim pursued. Attacks against civilians are not a proportionate means of fostering the establishment of human rights and democracy. Similarly, one must start from the premise that acts of violence committed against representatives or institutions of a State are not a lawful means. Accordingly, only the financing of acts carried out in undemocratic societies against the representatives and institutions of a non-law-governed regime fall within the scope of the saving clause in paragraph 3, except, once again, where that is the only proportionate means that can be used to foster the establishment of human rights and democracy.

Switzerland has every interest in ensuring that no terrorist act that causes devastating human and physical damage can be financed from its territory. Nor does it wish the perpetrators of such acts to take refuge in its territory in an abusive manner. It is therefore reasonable to think that paragraph 3 of article 260 quinquies of the Penal Code will be applied only very rarely and will, where necessary, be interpreted narrowly by the prosecuting authorities and the courts.

II. Protection of the financial system

1.3 *Effective implementation of paragraph 1 of the Resolution requires that financial institutions and other intermediaries (for example, lawyers, notaries and accountants, when engaged in brokering activities, as distinct from the provision of professional advice) should be under a legal obligation to report suspicious financial transactions. It appears in Switzerland's latest report (S/2003/967, p. 6) that Swiss legislation does not address this issue (i.e., there is no definition either for the financial sector or for intermediaries involved in financial activities on a professional basis). In this context, how does Switzerland intend to comply with the above obligations?*

• Reporting obligation of all financial intermediaries

The legal obligation to immediately report suspect financial transactions to the Money Laundering Reporting Office (Reporting Office), as provided in article 9, paragraph 1, of the Anti-Money Laundering Act (AMLA) (www.admin.ch/ch/f/rs/955_0/a9.html), applies in principle to all financial intermediaries. A financial intermediary who knows or suspects, based on well-

founded suspicions, that a transaction or assets involved in a business relationship is connected with a money-laundering operation or another offence punishable under the Penal Code, or is at the disposal of a criminal organization, must so inform the Reporting Office without delay. Terrorist groupings are criminal organizations; hence, they are covered by these provisions. The reporting obligation arises where there is a well-founded suspicion.

Financial intermediaries must also immediately freeze assets entrusted to them if they are connected with the reported information, and must keep them frozen until a decision is received from the competent prosecuting authority, but not longer than five working days. During this period, financial intermediaries may not inform either the persons concerned or third parties of the report they have made.

Reporting obligation of attorneys and notaries

Under article 9, paragraph 2, of the Anti-Money Laundering Act (AMLA), attorneys and notaries are exempt from the reporting obligation but only insofar as they are subject to professional secrecy under article 321 of the Swiss Penal Code. It follows from the existence of this exception that attorneys and notaries acting as financial intermediaries are liable to the reporting obligation, as this activity is not covered by the exception.

In order to determine whether or not an attorney or notary is subject to the reporting obligation for a given activity, two areas of the Federal Tribunal's jurisprudence can be consulted — professional secrecy of attorneys and notaries and, mutatis mutandis, the right to refuse to testify. Attorneys and notaries can invoke the right to refuse to testify but only in respect of activities that are traditionally part of their profession. This means that the reporting obligation applies to financial intermediation operations handled by attorneys and notaries outside the scope of their normal professional activities. The practice is that, since financial intermediation activities that are within the scope of attorneys' and notaries' normal professional activities are exempt from the reporting obligation, they are also exempt from the Anti-Money Laundering Act, as compliance with other obligations under this Act, particularly that of due diligence, is devoid of meaning unless compliance with the reporting obligation is also required where there is a well-founded suspicion of money-laundering.

On the other hand, once attorneys or notaries act as financial intermediaries outside the scope of their normal professional activities, that is, within the meaning of article 2, paragraph 3, of AMLA, they become subject to this Act and must therefore comply with the obligations set out in it, including the reporting obligation.

Thus, a determination must be made as to when an attorney or a notary is a financial intermediary within the meaning of article 2, paragraph 3, of the Anti-Money Laundering Act.

- Scope of application of the Anti-Money Laundering Act in the non-banking sector

The Anti-Money Laundering Act is applicable to financial intermediaries (article 2, paragraph 1, of AMLA). Hence, persons who are financial intermediaries within the meaning of the Act are subject to the requirements it sets out, including the reporting obligation laid down in article 9, unless their activities fall within the very narrow range of the exception described above.

When the Anti-Money Laundering Act was adopted by Parliament in 1997, some financial service providers were already subject to special federal laws and specific oversight authorities. As sufficient definitions and regulations regarding these financial intermediaries, who comprise what is commonly referred to as the banking sector (or the banking and insurance sector), already existed, they are mentioned only in article 2, paragraph 2, of the Anti-Money Laundering Act. This sector includes banks, securities dealers, investment fund managers and certain insurance companies. In 1998, the paragraph was revised to include casinos.

The aim of article 2, paragraph 3, of the Anti-Money Laundering Act was to establish regulations applicable to that portion of the financial sector not yet monitored. This meant ensuring equal treatment as concerned due diligence in financial transactions between the sector regulated by special laws and the sector that was not yet either regulated or monitored. To this end, lawmakers opted to extend the scope of application of the Act to incorporate the financial sector in broad terms. Thus, the Act applies not only to activities that particularly lend themselves to laundering but also to areas of the financial sector in which the risk of laundering is less obvious. The sector referred to in article 2, paragraph 3, of the Anti-Money Laundering Act is commonly known as the "non-banking sector". While it would have suffered to enumerate the areas covered by article 2, paragraph 2, of the Anti-Money Laundering Act, in order to draft this third paragraph, the non-banking sector had to be defined for the first time. Article 2, paragraph 3, makes the point that being subject to the law is determined not by belonging to a category but rather by the exercise of given activities.

In order to formulate the scope of application of the Act in this area, lawmakers relied on both the scope of application of article 305 ter of the Swiss Penal Code (www.admin.ch/ch/f/rs/311_0/a305ter.html), which criminalizes lack of diligence in financial matters, and on the European regulations in force at the time. This is how the first part of paragraph 3, commonly referred to as the general clause, came to be drafted: "Anyone who, in his professional capacity, accepts, keeps on deposit or helps to invest or transfer the assets of third parties shall also be deemed to be a financial intermediary". The second part of the paragraph consists of a non-exhaustive list of activities which lawmakers consider as falling under this sector. This list forms the basis for interpreting the first part of the paragraph, which is very broadly worded. According to this interpretation, the fact that this Act regulates activities within the financial sector only, as the title would indicate,[2] must be taken into account. What can be read into the Federal Council's Message on the Anti-Money Laundering Act is that article 2, paragraph 3, of AMLA was formulated with the activities of the following institutions and persons in mind: asset managers; foreign exchange offices; credit institutions; institutions dealing in foreign exchange and bank notes; attorneys, notaries and trustees acting as financial intermediaries; the post office, which handles a significant daily volume of payments; the federal railways and licensed transport companies insofar as they provide financial services, particularly foreign exchange operations.[3] A breakdown of current activities in the non-banking sector corroborates the lawmakers' hypotheses. The 6,200 financial intermediaries authorized to operate in this sector, or affiliated with it, comprise

[2] The full title of the law is the "Federal Act on the Prevention of Money-Laundering in the Financial Sector".

[3] Message of 17 June 1996 on the Federal Act on the Prevention of Money-Laundering in the Financial Sector, FF 1996 III 1073.

mainly: asset managers (43 per cent), trustees (29 per cent), attorneys and notaries (20 per cent), foreign exchange brokers (2 per cent), money transfer agents (3 per cent), mutual funds distributors (7 per cent) and others (4 per cent).[4]

The lack of experience in regulating the non-banking sector explains why the formulation of article 2, paragraph 3, the Anti-Money Laundering Act is open to interpretation. The oversight authority for the prevention of money-laundering (Control Authority) is the authority created by the Anti-Money Laundering Act that monitors the non-banking sector; as such, it is the sole authority competent to make this interpretation, subject, of course, to the jurisprudence of the appeal bodies.

The Control Authority clarified the scope of application of the Anti-Money Laundering Act in the non-banking sector through successive general decisions reflecting its interpretations with regard to the various areas of activity concerned. These decisions were published over time on the Control Authority's website (www.gwg.adfmin.ch/f/index.htm). They were thus made accessible to the broader public, firmly establishing the legislation in this area. These more than 20 decisions were ultimately superseded by a consolidated and systematized publication narrowing the scope of application of AMLA with regard to persons and regions.[5] In a chapter on special issues, this publication explicitly analyses the regulation of attorneys' and notaries' activities, using examples to explain which ones fall within the scope of their normal professional activity and which do not.

- "Professional character" pursuant to article 2, paragraph 3, of the Anti-Money Laundering Act

Initially, the Control Authority set out to define the concept of "professional character" under the general clause contained in article 2, paragraph 3, of AMLA. The most that can be derived from the Message concerning AMLA is that its scope of application should not be limited to remunerative activities constituting principal activities, but rather should also incorporate remunerative secondary activities.[6] The Control Authority has elaborated rules to help determine when an activity reaches the desired intensity to be characterized as professional; they are set out in the Ordinance of 20 August 2002 concerning financial intermediation in the non-banking sector carried out on a professional basis.[7]

A person is deemed to be carrying out on a professional basis an activity covered by the Anti-Money Laundering Act if his annual gross earnings from such activities exceed 20,000 francs, if he maintains ongoing business relations with more than 10 contracting partners during the calendar year, has power of alienation over assets belonging to third parties exceeding 5 million francs or if his total volume of transactions exceeds 2 million francs during a calendar year. Not all these criteria have to exist. In other words, if even one of them applies, it is sufficient for an activity to be considered as having a professional character and, thus, to become

[4] As some financial intermediaries carry out more than one of these activities, the total exceeds 100 per cent.

[5] Dina Balleyguier, "Le champ d'application personnel et territorial de la loi sr le blanchiment d'argent dans le secteur non financier", www.gwg.admin.ch/f/publika/pdf/3448!.pdf.

[6] "This does not, of course, mean that someone who carries out such an activity occasionally should be subject to the Act. Only persons who carry out these activities on a professional basis; whether as a main or secondary activity, should be covered by the Anti-Money Laundering Act." Message, op. cit, p. 1073.

[7] Anti-Money Laundering ordinance, RS 955.20, www.admin.ch/ch/f/rs/c955_20.html.

subject to AMLA. An intermediary carrying out activities to which one or more of the professional criteria applies must be a member of a self-regulatory body and comply with the reporting obligation.[8]

The Counter-Terrorism Committee seems to be questioning the due diligence obligations of some financial intermediaries (attorneys, notary publics, accountants) with regard to, in particular, their duty to report to the Financial Intelligence Unit when they suspect laundering or financing of terrorism.

The Money-Laundering Reporting Office is able to provide exact statistics on reporting by financial intermediaries during the 2001-2004 period:

	Attorneys/notary publics	*Accountants*	*Total no. of reports filed*
2001	9	33	417
2002	12	42	653
2003	9	48	863
2004	10	36	821

The above figures show the effective participation of these financial intermediaries in preventing money-laundering and the financing of terrorism.

- Consequences of a violation of money-laundering regulations

Various types of measures are taken against financial intermediaries if they violate their due diligence obligation to prevent money-laundering, including penal, administrative and disciplinary measures.

1. Penal measures

Under article 305 bis of the Swiss Penal Code (www.admin.ch/ch/f/rs/311_0/a305bis.html), any act that obstructs the establishment of provenance, discovery or confiscation of assets where a person had knowledge of their criminal origin, or should have presumed such criminal origin, is punishable by a fine or imprisonment. In serious cases, the penalty can be up to five years' hard labour or imprisonment. A fine of up to 1 million francs can be imposed over and above deprivation of liberty.

This provision applies to anyone who engages in money-laundering. If the money was laundered by employees of a company, however, and the perpetrator of the crime cannot be determined by a criminal investigation, the company may be penalized in lieu of the individual concerned. In fact, within the meaning of article 100 quater of the Swiss Penal Code (www.admin.ch/ch/f/rs/311_0/a100quater.html), a crime or an offence committed by employees of a company while carrying out normal business activities consistent with the company's objectives is imputed to

[8] In order to work legally, the financial intermediaries covered by article 2, paragraph 3, of the Anti-Money Laundering Act may either become members of self-regulatory bodies recognized and monitored by the Control Authority, which would then be their only oversight body, or request authorization from the Control Authority to carry out their activity and be subject to direct monitoring by it. Under article 14, paragraph 2, of the Anti-Money Laundering Act, attorneys and notaries acting as financial intermediaries cannot be subject directly to the Control Authority but rather must belong to a self-regulatory body .

the company if it cannot be imputed to any individual owing to the company's lack of structure. In this case, the company is liable to a fine of up to 5 million francs.

Going a step further than what is set out in article 305 bis of the Swiss Penal Code, Swiss legislation contemplates a situation in article 305 ter that is directly applicable to financial intermediaries. Under this provision (www.admin.ch/ch/f/rs/311_0/a305ter.html), anyone who, in the exercise of his profession, accepts, keeps on deposit or helps to invest or transfer assets belonging to a third party and fails to verify the identity of the beneficial owner with the diligence that can reasonably be expected under the circumstances, shall be subject to a prison term of up to one year, arrest or a fine.

2. Administrative measures

The administrative measures taken against financial intermediaries depend on the category they fall under. Indeed, financial intermediaries in Switzerland are accountable to various oversight authorities. They apply specific laws to financial intermediaries that violate their due diligence obligations with respect to the prevention of money-laundering. The practice of the various oversight authorities is as follows:

(a) Measures taken by the Federal Banking Commission

The Federal Banking Commission is the oversight authority for banks, stock exchanges, securities dealers and investment funds.

The obligations of banks in connection with the prevention of money-laundering and the financing of terrorism — for example, organizational measures, heightened diligence and a system of monitoring transactions — are explicitly defined in the Anti-Money Laundering Ordinance (www.admin.ch/ch/f/rs/c955_022.html).

Far from considering the failure to meet due diligence obligations imposed by the Ordinance as a minor offence, the Federal Banking Commission believes, on the contrary, that compliance with them is essential, particularly in order to preserve trust and reputation. It feels that it has a clear mandate to investigate non-compliance with due diligence and that, if need be, recourse to coercion is justified. Accordingly, the Commission is unrelenting in its prosecution of serious breaches of due diligence, which it either undertakes itself (pursuant to its Anti-Money Laundering Ordinance) or accomplishes by reporting the case to the competent prosecutorial bodies through the criminal justice system or under the Agreement on the Banks' Obligation of Due Diligence.

The Federal Banking Commission can take three different types of measures against a financial intermediary under its supervision that has failed to comply with its due diligence obligations:

- Any bank that refuses to comply with instructions or that persistently or repeatedly fails to comply with the requisite organizational measures may have its authorization to do business revoked (article 23 quinquies, Banking Act, www.admin.ch/ch/f/rs/952_0/a23quinquies.html).

- When the Commission finds non-compliance with organizational measures, it instructs the institution concerned, if necessary by a decision, to take rapid and effective action. It thus orders a special review of the institution (article 23 quater, Banking Act, www.admin.ch/ch/f/rs/952_0/a23quater.html).

- Under the Stock Exchanges and Banking Acts, the board of directors and executives of banks and securities firms must demonstrate "every guarantee of conduct above reproach". If they are found to be responsible for serious breaches of due diligence obligations or for non-compliance with the requisite organizational measures to prevent money-laundering (including identification of the contracting partner and beneficial owner, article 14, paragraph 2, of the Ordinance), the Federal Banking Commission can take a decision to prohibit them from carrying out business over a given period, either in their current posts or in a comparable position in any other institution that it monitors (article 3, paragraph 2 (c), Banking Act, www.admin.ch/ch/f/rs/952_0/a3.html).

The consistent practice of the Federal Banking Commission in this area has shown that, in Switzerland, failure to meet responsibilities with regard to money-laundering and corruption are severely punished. One need only refer to the decisions of the Federal Banking Commission in the Abacha case (Federal Banking Commission Bulletin No. 45, p. 15 et seq.) and in the Montesinos case (Federal Banking Commission Bulletin No. 40, p. 123 et seq.), which have been published on the Commission's website at the following address: www.ebk.ch/f/publik/bulletin/index.html.

(b) Measures taken by the Federal Office of Private Insurance

The Federal Office of Private Insurance "tangibly" monitors the activities of all insurance firms in Switzerland, particularly those of life insurance companies, meaning that it is fully competent to monitor and control and to take any measures available to it. The prevention of money-laundering is one of the goals of such monitoring. Among the oversight activities of the Office, the monitoring of insurers plays a vital role in implementing the Anti-Money Laundering Act. Monitoring the prevention of money-laundering is thus an element of any control operation.

The Federal Office of Private Insurance has specified and defined in its Anti-Money Laundering Ordinance (www.bk.admin.ch/ch/f/rs/c955_032.html) the obligations laid down by the Anti-Money Laundering Act as they apply to insurance institutions. This Ordinance sets out the measures which the Federal Office is empowered to take in order to carry out its functions. If the provisions of the Ordinance are violated, the Federal Office of Private Insurance can take measures to ensure compliance with the Anti-Money Laundering Act or one of the many measures available to it under Swiss insurance legislation, such as restricting management operations, opening a specific inquiry, dismissing employees or directors at any level of the company, imposing a fine under the Anti-Money Laundering Act, or, if absolutely necessary, revoking the company's authorization to do business in the insurance

sector for serious or repeated breaches of the obligations laid down by the Anti-Money Laundering Act.

Apart from direct monitoring of insurance companies, the Federal Office also supervises the self-regulatory body called the Swiss Insurers Association (www.svv.ch/index.cfm?id=638), having authorized the body and approved its charter and by-laws. Under the Anti-Money Laundering Act, the Federal Office is responsible for verifying whether insurance institutions, regardless of whether or not they belong to the Swiss Insurers Association, are complying with their legal obligations, that is, their obligations concerning due diligence and actions to be taken if they suspect money-laundering — in short, whether the Association is fulfilling its mandate. The Federal Office also ensures that the Association is monitoring insurance companies' compliance with its by-laws. If the self-regulating body violates the provisions of the Act, the ordinance or its own by-laws, the Federal Office can, in an extremely serious case, cease to recognize it.

(c) Anti-money laundering measures by the Control Authority

The Anti-Money Laundering Control Authority (Control Authority) is the authority that monitors the non-banking sector. It authorizes and monitors intermediaries in this sector that choose to submit to its direct oversight. Moreover, it recognizes and supervises the self-regulatory bodies to which the intermediaries in this sector may belong as an alternative to direct accountability to the Control Authority. Oversight by the Control Authority is limited to monitoring compliance with the obligations set out in the Anti-Money Laundering Act.

The obligations incumbent upon financial intermediaries directly subordinated to the Control Authority (directly subordinated financial intermediaries, or DSFIs) — for instance, organizational measures, enhanced due diligence, transaction monitoring systems, etc. — are explicitly regulated by the Money-Laundering Control Authority Ordinance (OAP-LBA, http://www.admin.ch/ch/f/rs/c955_20.html).

When the Control Authority is informed that a DSFI has breached the Anti-Money Laundering Act (AMLA), it takes the necessary measures to re-establish compliance with the law while ensuring respect for the principle of proportionality. The Act gives two examples of such measures, which are the strictest imaginable (art. 20, AMLA). Therefore, if a DFSI refuses to comply with an enforceable decision, the Control Authority may publish that decision in Switzerland's Official Trade Register or bring it to the attention of the public in some other way, provided that it has given the interested party prior warning of its intention to do so. It may also withdraw the DSFI's operating authorization. This happens if the DSFI or the persons responsible for the administration or management of its affairs no longer meet the required conditions or commit serious or repeated violations of their legal obligations. In addition, as a general rule, if a DSFI subject to those penalties continues to carry out financial intermediation as its principal activity, as either a juridical person or a partnership, the Control Authority also calls for its liquidation. If the DSFI in question is a sole

trader, the Control Authority orders its deletion from the trade register, thereby forcing it to discontinue all activities. In addition to the withdrawal of authorization, the Control Authority may order all the measures available to the supervisory authorities established by special legislation.

Accordingly, the Control Authority takes measures to re-establish compliance by financial intermediaries with the law either, in less serious cases, by sending a letter inviting the intermediary to rectify the shortcomings identified or, in cases of more significant violations of the obligations arising under AMLA, by an official decision notified to the intermediary. In addition to the above-mentioned withdrawal of the operating authorization, which is the most serious measure that can be imposed by the Control Authority, the following penalties may be imposed: reprimand; injunction ordering the internal reorganization of the intermediary or the appointment of an external auditor; clarification of the intervention methods of the individual responsible for internal controls; setting of deadlines for rectifying shortcomings in the implementation of due diligence obligations or for submitting internal guidelines to the Control Authority for approval and, lastly, conduct of special reviews to monitor the strict and faithful compliance with the measures ordered.

Furthermore, the Control Authority can issue decisions warning that failure to comply will result in a fine pursuant to article 38 of AMLA (www.admin.ch/ch/f/rs/955_0/a38.html).

The Control Authority is not empowered to impose penalties falling within the competence of administrative criminal law (for instance, fines). It can issue decisions and, if necessary, enhance their significance by warning that failure to comply will result in a fine pursuant to article 38 of AMLA. If a DSFI carries out its activities without permission, fails to comply with its reporting obligation or refuses to accept a decision (art. 36-38, AMLA), the Control Authority may file a criminal complaint with the Federal Department of Finance, which is responsible for prosecution and sentencing.

(d) Measures taken by the Federal Gaming Commission

The Federal Gaming Commission is the supervisory authority ensuring that casinos comply with their due diligence obligations to combat money-laundering (art. 48 of the Casinos Act (LMJ) www.admin.ch/ch/f/rs/935_52/a48.html)).

The due diligence obligations incumbent upon casinos are laid out in the Commission's Anti-Money Laundering Ordinance of 28 February 2000 (www.admin.ch/ch/f/rs/c955_021.html).

In order to fulfil its mandate, the Commission may request any necessary information and documentation from casinos, companies that manufacture or market gaming equipment and bodies responsible for overseeing such establishments. It may also appoint experts, confer specific mandates on the oversight body and establish Internet

connections enabling the monitoring of casinos' computer facilities (art. 48, para. 3, LMJ).

If the Casinos Act is contravened or if any irregularity arises, the Commission orders the measures necessary for the restoration of legality or elimination of the irregularity. It may take interim protective measures, such as suspending the concession. If the situation so requires, the Commission may intervene in the operation of a casino. In addition, if an enforceable decision is not complied with in spite of a notice of default, the Commission may, automatically and at the casino's expense, enforce the measures ordered and publicize the casino's refusal to comply with the decision (art. 50, LMJ).

The Casinos Act also provides for the imposition of administrative penalties. Thus, the owner of the operating concession who, for his or her own benefit, contravenes the concession or a decision of the Commission is required to pay an amount of up to three times the profit made as a result of that contravention. If no profit was made or if the profit cannot be calculated or assessed, the amount payable may be up to 20 per cent of the gross proceeds of all games played during the previous fiscal year (art. 51, LMJ).

In the event of serious or repeated violations, proceedings may result in the definitive withdrawal of the concession (art. 19, LMJ). In particular, the Commission may withdraw the concession if the casino has committed or allowed the commission of money-laundering operations within the meaning of AMLA or if it has not complied with the due diligence obligations to combat money-laundering (art. 20, LMJ, www.admin.ch/ch/f/rs/935_521/a20.html).

In addition to administrative penalties, the Casinos Act provides for criminal penalties (arts. 55 and 56, LMJ). Thus, anyone who intentionally fails to comply with the due diligence obligations to combat money-laundering laid out in the Act may be sentenced to up to one year's imprisonment or a fine of up to 1 million Swiss francs. In serious cases, the penalty consists of up to five years' rigorous imprisonment or at least one year's ordinary imprisonment.

3. Self-regulation measures

Self-regulation by financial intermediaries is also subject to monitoring by various bodies.

(a) Banks

For banks, the official procedure for verifying the identity of the contracting partner and identifying the beneficial owner of the assets is regulated by the Agreement on the Swiss Banks' Code of Conduct with regard to the exercise of due diligence (CDB, www.swissbanking.org/fr/1116_e.pdf), issued by the Swiss Bankers Association. The most recent version of this standard (CDB 03) entered into force on 1 July 2003. It was declared binding by the Federal Banking Commission in article 14 of its Anti-Money-Laundering Ordinance.

Failure to comply with these provisions may lead to the imposition of a penalty by the Swiss Bankers Association Bank Monitoring Commission (a fine of up to 10 million Swiss francs). The Monitoring Commission's procedures are clearly effective, as they are carried out rapidly and rigorously and result in fines that can be extremely heavy.

(b) Private insurance companies

Most life insurance companies are affiliated with the self-regulatory body of the Swiss Insurance Association (www.svv.ch/index.cfm?rub=401), which monitors the anti-money-laundering measures taken by its members. To that end, the Association works in close cooperation with the respective internal departments of insurance companies, their internal and external oversight services and the technical commissions established to ensure the proper functioning of the anti-money-laundering mechanism.

The Association has established a system of controls and penalties as part of its regulations. If a company fails to comply with its obligations, the Association's directors may impose penalties ranging from a warning to a fine of up to 1 million Swiss francs.

(c) Other financial intermediaries

As mentioned earlier, financial intermediaries within the meaning of article 2, paragraph 3, of AMLA (www.admin.ch/ch/f/rs/955_0/a2.html) must obtain an operating authorization from the Control Authority or become affiliated with a self-regulatory body recognized by that Authority. Self-regulatory bodies must ensure that the financial intermediaries affiliated with them comply with the obligations laid out in AMLA (art. 24, para. 1 (b), AMLA). They are responsible for issuing regulations stipulating, in particular, the due diligence obligations (art. 25, AMLA). Those regulations must also indicate how the self-regulatory body monitors compliance with the obligations laid out in AMLA and detail the penalties applicable when those obligations are breached. Such regulations usually provide for the following types of penalties:

- Injunction;
- Reprimand or warning;
- Financial penalties;
- Expulsion.

The regulations issued by the self-regulatory bodies must be approved by the Control Authority (art. 18, para. 1 (c), AMLA).

If a financial intermediary is expelled from a self-regulatory body, it comes under the direct supervision of the Control Authority; article 28, paragraph 2 of AMLA applies mutatis mutandis. In order to exercise its activity it must obtain authorization from the Control Authority, unless it affiliates with another self-regulatory body within two months.

(d) Casinos

The Federal Gaming Commission may collaborate with a self-regulatory body as long as the latter has regulations and ensures that the casinos affiliated with it comply with the due diligence obligations imposed by AMLA and its implementing ordinance (art. 21, AMLA implementing ordinance).

4. Conclusion

The measures taken in respect of financial intermediaries are exhaustive. They range from self-regulation measures, characterized by their speediness, to punitive measures, which may have consequences for individuals, and also include administrative measures, which may be extremely severe; in particular, they may involve the withdrawal of operating authorizations and the liquidation of the company. Given that the various types of measures (administrative, judicial and self-regulatory) can exist in tandem, several procedures may be conducted simultaneously.

III. Effectiveness of counter-terrorism machinery

1.4. In the context of an effective anti-terrorist strategy, paragraph 2 (b) of the Resolution requires States, inter alia, to take steps to prevent the commission of terrorist acts. In this regard, please outline any special anti-terrorist policies that Switzerland has developed that are aimed at preventing the commission of terrorist acts in the following areas:

- *Criminal investigation and prosecution;*
- *Links between terrorism and other criminal activities;*
- *Physical protection of potential terrorist targets;*
- *Strategic analysis and forecasting of emerging threats.*

The investigations carried out by the Office of the Public Prosecutor of the Confederation and, subsequently, by the Office of Federal Examining Magistrates, have shown that activities supporting criminal organizations, in this case terrorist organizations, are often linked to other criminal activities, such as the production of counterfeit identity documents.

Switzerland has not taken any special measures within the meaning of question 1.4 to prevent the commission of terrorist acts. However, wherever possible, the Criminal Investigation Department has opened an investigation with a view to ascertaining the facts of the case.

In recent years, various political, economic and social factors have led to an increase in violent acts. To ensure the protection of diplomatic missions, in accordance with the obligations arising under international law, a surveillance agency affiliated with the local police force has been set up in Geneva and Berne.

Following the events of 11 September 2001 and the United States interventions in Afghanistan and Iraq, the security threat to the diplomatic missions in Switzerland of countries such as the United States and the United Kingdom has increased. Since the existing police capacity is insufficient to provide the necessary security measures, the Swiss Federal Council and Federal Parliament have agreed to the provision of military support to the civilian authorities until 2006.

In view of the security situation at the national borders and of possible future developments, the border guard has also received military reinforcements.

On 5 December 2003, the Federal Council extended until 31 December 2005 two temporary counter-terrorism measures: the Ordinance banning Al-Qaida and related organizations and the Ordinance on reporting obligations and the right of communication. The ban applies not only to all activities carried out by the organization itself but to all acts in support of it (propaganda, etc.).

Established on 1 January 2004, the Financing of Terrorism Division of the Federal Criminal Investigation Department is dedicated exclusively to combating such activities.

Within the framework of the Federal Act establishing measures for the maintenance of domestic security (www.admin.ch/ch/f/rs/c120.html), the Federal Police Office carries out surveillance of, inter alia, violent Islamic groups in Switzerland. If there are specific signs of activities prohibited by the Penal Code, criminal proceedings are initiated for membership of a criminal organization. Personal information is dealt with on a case-by-case basis in accordance with the applicable legislation. The Confederation does not maintain a list of suspects, which would provide an overview of the situation and make it possible to keep statistics up to date.

Switzerland is an active member of the Berne Club which has, for many years, brought together, in an informal manner, the heads of the European security and intelligence services. Switzerland is represented by the Chief of the Analysis and Prevention Service of the Federal Police. The group is based on informal agreements and applicable domestic legislation and is an instrument of international cooperation in the fields of counter-terrorism, espionage, violent extremism and proliferation. Since November 2001, at the urging of European Union ministers, the heads of international counter-terrorism organizations have met four times a year in order to conduct risk assessments. These meetings take place within the framework of the Anti-Terrorist Group, in which Switzerland is represented as a full member by the Analysis and Prevention Service.

Armed police officers are present on board Swiss aircraft as security guards. They are responsible for carrying out passenger security controls and for providing protection against offences that may be committed on board Swiss aircraft operating international services. In key foreign airports with inadequate security standards, they are supported by unarmed security officials on the ground. The operating plans, which are developed in accordance with the level of risk at any given time, are adapted as necessary. In addition, the deployment strategy for security staff, which depends on the threat level at any given time, is regularly reviewed.

Swiss airports meet the security requirements of the International Civil Aviation Organization, including measures for inspection/filtering and for physical protection against potential terrorist attacks (security perimeter).

Under the bilateral air transport agreement with the European Union, Switzerland has undertaken to comply, in particular, with Regulation (EC) No. 2320/2002 of the European Parliament and of the Council establishing common rules in the field of civil aviation security, which provides for a comprehensive series of security measures, including strict access controls, including controls on all airport staff with access to high-security areas.

***1.5** Has Switzerland encountered any difficulties regarding law enforcement and/or the gathering of intelligence in relation to the areas mentioned above? If so, please provide a brief description of what these difficulties were. The CTC would also find it helpful to receive information on recent successful operations in the areas above. In supplying such examples, States are not expected to supply information about ongoing investigations or judicial processes, if to do so would prejudice the proper conduct of an investigation or judicial process.*

As the prosecuting authority, the Office of the Public Prosecutor of the Confederation has not encountered any particular difficulties in the area of law enforcement (art. 260 ter, Swiss Penal Code).

A number of statements were made in Parliament in the aftermath of the attacks of 11 September 2001. They called, inter alia, for the strengthening of the bodies responsible for State protection as well as the adaptation of their methods and instruments.

Accordingly, in November 2001, the Federal Council requested the Federal Department of Justice and Police to submit to it a report and proposals on measures that could be taken to enhance the fight against terrorism. In June 2002, it approved the report entitled "Analysis of the situation in and threats to Switzerland following the terrorist attacks of 11 September 2001" and decided to divide the legislative tasks into two sections, the second of which deals with terrorism and extremism.

The Federal Council received the first views on this matter in October 2004 and instructed the Federal Department of Justice and Police to present it with a draft consultation paper. This legislative work is at the top of the Department's priority list for 2005.

The gaps identified in the area of domestic intelligence, which will be filled, relate above all to the gathering and processing of information. In that regard, the following points are particularly important.

The threats posed by terrorism, violent extremism, espionage and the proliferation of weapons of mass destruction may, in principle, justify the gathering of intelligence by methods that seriously infringe fundamental rights. This is true, for instance, where terrorist activities threaten, directly or indirectly, the lives or physical integrity of individuals in Switzerland or abroad.

The report asks that the newly implemented intelligence-gathering methods be accompanied by adequate control mechanisms. The specific definition of those mechanisms will be an essential element of the legislative review. Several control and surveillance models are currently being assessed with a view to reaching a balanced solution.

Lastly, various specific measures are envisaged to address the aforementioned gaps. Consideration is currently being given to how these measures will be submitted to the Federal Council. Parliamentary debates on the subject have mentioned, inter alia, preventive surveillance of mail and telecommunications, secret investigations by the intelligence services, surveillance of private premises and penetration of third-party computer systems.

In terms of intelligence, the main obstacle in Switzerland's campaign to prevent terrorism is the inadequacy of the legal arsenal governing intelligence activities. In particular, the 1998 Domestic Security Measures Act severely restricts actions that

can be taken by the security services. In 2003, following a number of strategic reports identifying that weakness in the law, the Federal Council began amending the Act with a view to extending the possibilities of preventive action available to the intelligence service (wire tapping, surveillance, etc.). The revised Act should be submitted to the Chambers in 2006.

1.6 In the context of criminal proceedings, paragraph 2 (e) of the resolution requires States, inter alia, to ensure that terrorists and their supporters are brought to justice. Are any special counter-terrorist measures applied in criminal proceedings? To what extent can intelligence data be used in judicial proceedings? Does Switzerland train its administrative, investigative, prosecutorial and judicial authorities to enforce its laws in relation to:

– *Typologies and trends in terrorist financing methods and techniques;*

– *Techniques for tracing criminal properties and funds with a view to their seizure and confiscation?*

The Office of the Public Prosecutor of the Confederation has no special counter-terrorist measures in its arsenal. As in other criminal investigations, ad hoc security measures may be granted to the judges or police officers handling investigations, if the situation so requires.

In terrorism cases information is often provided by intelligence sources. In Switzerland, the intelligence services have cooperated by sharing information with the federal judicial police. The latter is then responsible for feeding the information into the judicial system in the form of a report to the prosecuting authority.

Switzerland does not provide special training for its administrative, investigative, police and judicial authorities. The persons leading such investigations receive on-the-job training.

1.7 In the context of investigation techniques:

1. The CTC would be grateful if Switzerland would indicate whether it uses special investigatory techniques including, inter alia:

- *Undercover operations;*
- *The tracking of funds of criminal gangs;*
- *The interception of communications on the Internet and other modes of communication;*
- *Breaking the chains linking terrorist groups.*

In Switzerland, terrorism-related investigations are conducted in much the same way as any other investigations into criminal organizations. Such operations, therefore, are not given special treatment just because they are linked to terrorism.

2. Has Switzerland created appropriate mechanisms to ensure adequate cooperation and information-sharing among the various government agencies that may be involved in investigating the financing of terrorism?

The Money-Laundering Reporting Office (MROS) cooperates with regard to combating the financing of terrorism at various levels:

- At the national level:
  - The Office is empowered to exchange information with all federal and cantonal monitoring and prosecuting authorities.
  - It participates in quarterly coordination meetings bringing together all the Swiss authorities responsible for combating the financing of terrorism and money-laundering, i.e., the Federal Banking Commission, the Anti-Money-Laundering Authority, the Federal Gaming Commission, the Federal Private Insurance Office and the Office of the Public Prosecutor of the Confederation.
  - It participates in the work of the interdepartmental working groups on terrorism and on the Counter-Terrorism Action Group (CTAG), chaired by the Federal Department of Foreign Affairs.
- At the international level:
  - The Office has the authority to share intelligence with foreign prosecuting authorities responsible for matters relating to the financing of terrorism and money-laundering.
  - It shares intelligence relating to the financing of terrorism and money-laundering with the Financial Intelligence Units belonging to the Egmont Group (currently 94 States).
  - The Office is part of the Swiss delegation to FATF and participates as an expert in its work on typologies.

As an example, statistics relating to information exchanged within the Egmont Group between 2001 and 2004 are included below. The figures represent the number of persons concerning whom information was requested:

	2001	*2002*	*2003*	*2004*
Requests to the MROS	981	1 189	1 661	1 701
Requests from the MROS	Not available	499	1 075	1 148
Total	**981**	**1 688**	**2 736**	**2 849**

The number of agencies with which the Office is in permanent contact and the increasing volume of actual exchanges demonstrate the high degree of cooperation by the Swiss Financial Intelligence Units in matters relating to the financing of terrorism.

- Additional information relating to paragraph 1.8 of the second Swiss supplementary report (S/2003/967)

The table showing the number of cases reported by financial intermediaries in connection with the financing of terrorism is as follows:

Annual statistics of the Money-Laundering Reporting Office of Switzerland (MROS)	*2001*	*2002*	*2003*	*2004*
Total number of suspicious money transactions reported	417	652	863	821
Reports related to the financing of terrorism (% of total)	95 22.8%	15 2.3%	5 0.6%	11 1.3%
Reports received from the banking sector	34%	66%	60%	27%
Amounts in Swiss francs frozen by the financial intermediary at the time of reporting	SwF 24 million*	SwF 1.6 million	SwF 154,000	SwF 896,000

* Translator's Note: The table on p. 7 of document S/2003/967 shows a figure of SwF 37 million for 2001.

1.8 *Concerning witness protection, is a witness protection programme in place in Switzerland? If yes, please describe any special features adopted in such a protection programme to deal with cases involving terrorism.*

Switzerland does not currently have a special witness protection programme. The situation may change following the revision of the Penal Code.

IV. Effectiveness of customs, immigration and border controls

1.9 *Paragraph 2 (g) of the resolution requires States, inter alia, to have in place effective border controls in order to prevent the movement of terrorists and terrorist groups. In this regard:*

(a) Could Switzerland outline how it implements the common standards set by the World Customs Organization in relation to electronic reporting and the promotion of supply chain security?

The Federal Customs Administration works in close cooperation with the World Customs Organization (WCO) and consults with customs administrations in neighbouring countries and with the European Commission's Taxation and Customs Union Directorate-General with a view to implementing WCO standards and advancing the organization's aims. Examples include:

- Adoption of the revised Kyoto Convention in June 2004 (Switzerland was the 33rd Member State to adopt the revised Convention; today, 37 Member States out of the 40 required for it to enter into force have adopted the Convention);
- Adaptation of customs procedures (advance electronic reporting, updating of obsolete procedures) is under way;
- Adoption of the Johannesburg Convention is under way;

- Ongoing provision of information to relevant associations and organizations through meetings and briefings;
- Administrative assistance agreement with the United States currently being drafted;
- Acquisition of a mobile scanner in 2003;
- Revision of customs legislation (currently before Parliament).

In addition, the Federal Customs Administration closely follows the work of the WCO High Level Strategic Group, which met for the second time in November 2004 and adopted a resolution and a Framework of Standards. These two documents, which will have repercussions for the Federal Customs Administration, should be adopted by the Customs Cooperation Council in June 2005 (the Swiss delegation is composed of Mr. R. Dietrich, Director-General for Customs, and Mr. R. Lüssi, Head of International Affairs).

The Federal Customs Administration actively participates in the regional events to which WCO member States are invited. Combating terrorism will be one of the key topics at the next European conference of directors-general for customs, to be held in January 2005 in Almaty.

(b) Is the supervision of persons and cargo in Switzerland undertaken by separate agencies (e.g. immigration and customs) or is one agency responsible for both functions? If more than one agency is involved, do these agencies share information and coordinate their activities?

Commercial cargo traffic and cargo accompanying individuals, regardless of the mode of transport (road, air, water, mail, railway, etc.), is supervised by the Federal Customs Administration.

The border guard checks persons at the borders, on water and on land.

The cantonal police force is responsible for checking persons travelling on international air and rail lines.

(c) How does Switzerland monitor its borders between points of entry in order both to satisfy itself that these areas are not being used to undertake terrorist activities against its neighbours and to defend itself against possible infiltration by terrorists? Does Switzerland have existing arrangements to cooperate with bordering States in order to prevent cross-border terrorist acts? If so, please elaborate.

In the context of combating terrorism, the border guard carries out its activities under a mandate from the Federal Police Office Analysis and Prevention Service. The observations made in the course of these activities are taken into account in assessing the situation.

(d) Regarding international flights, does Switzerland use advance passenger information programmes to check the list of inbound passengers against information contained in databases on terrorism, before the passengers land?

Swiss airlines pass on the information required by advance passenger information programmes, even though Switzerland itself does not require this.

(e) The CTC takes positive note that Switzerland has acceded to annex 17 of the Convention on International Civil Aviation. In this regard, could Switzerland inform the CTC as to the domestic agency or agencies that are responsible for airport and port security? In addition, if this agency or agencies are distinct from Switzerland's police forces, how is information concerning terrorist threats passed on to these organizations? Are periodic security audits performed at airports and ports? Is access to port facilities controlled? If so, how? Are airport and port personnel screened and provided with identity cards to prevent access by unauthorized personnel to these facilities? Are detection devices in place to screen passengers and cargo for weapons and hazardous materials? Are hazardous materials segregated and secured during the movement of cargo by air or by river?

The Federal Office of Civil Aviation is responsible for airport security in Switzerland and conducts inspections on a regular basis. Airport personnel are subject to an investigation of moral standards before being granted access for a limited period and are screened before accessing sensitive areas.

V. Controls to prevent access to weapons by terrorists

1.10 *Paragraph 2 (a) of the resolution requires each Member State, inter alia, to have in place appropriate mechanisms to deny terrorists access to weapons. In this context, does Switzerland's customs service implement WCO recommendation concerning the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (29 June 2002)? If yes, please outline the measures applicable in Switzerland.*

The main legal basis applied by the Federal Customs Administration in this area is legislation relating to war materiel, weapons and the supervision of cargo. These laws and ordinances provide details of, inter alia, the rights and duties of the customs services with regard to the import, export and transit of cargo. They are much more detailed and precise than the United Nations resolution (see also paras. 1.11 and 1.13).

Neither Switzerland nor the European Union has yet implemented the aforementioned WCO recommendation. Only Canada has implemented it (as at October 2004). This can be explained by the insignificance of the quantities concerned and by data protection considerations. The recommendation is also somewhat redundant in the light of measures taken by other federal departments.

1.11 *Is it necessary to lodge, register or check the Goods Declaration and supporting documentation concerning firearms prior to their import, export or transit? In addition, is it necessary to encourage importers, exporters or third parties to provide information to Switzerland's customs authorities prior to the shipment of such goods?*

The import, export or transit of firearms is subject to authorization from the relevant service (State Secretariat of the Economy or Central Weapons Office). Each authorization must then be submitted to the customs services for verification when the cargo in question crosses the border.

1.12 *Are mechanisms in place to verify the authenticity of licences and other official documents in relation to the import, export or transit of firearms?*

The customs services are provided with the signature of persons authorized to grant import, export or transit licences. Should there be any doubt concerning a particular authorization, the customs service concerned contacts the relevant service to verify — on the basis of a copy of the said authorization — that it has been issued lawfully.

1.13 *Has Switzerland implemented, using risk assessment principles, appropriate security measures concerning the import, export and transit of firearms? In this context, does Switzerland conduct security checks on the temporary storage, warehousing and transportation of firearms? Does Switzerland require the persons involved in these operations to undergo security vetting?*

For many years now, the Federal Customs Administration has successfully used the risk assessment instrument relating to the import, export and transit of cargo of all kinds. Firearms and spare parts are, of course, no exception. In line with its policing powers, the Federal Customs Administration is authorized at all times to carry out checks of any kind in free ports. In an effort to strengthen border controls, it is envisaged that, under the revised Customs Act, scheduled to enter into force on 1 July 2006, it will be necessary to submit an inventory of all warehoused high-risk cargo (including firearms) to the customs services.

2. Assistance and Guidance

2.1 *The CTC wishes to emphasize once more the importance that it attaches to the provision of assistance and advice in connection with the implementation of resolution 1373 (2001).*

2.2 *The CTC notes with appreciation that the Government of Switzerland has offered to provide assistance to other States in connection with the implementation of the Resolution and would appreciate receiving any updates concerning the information currently posted on the Directory of Assistance. Furthermore, the CTC would encourage Switzerland to continue to inform the CTC of assistance it is currently providing to other States in connection with the implementation of the resolution.*

2.3 *The CTC maintains a Directory of Counter-Terrorism Information and Sources of Assistance in the Field of Counter-Terrorism in which all relevant information on available assistance is posted. It can be found on the Committee's website at: http://www.un.org/sc/ctc.*

2.4 *If Switzerland believes that it could benefit from discussing aspects of the implementation of the Resolution with the Committee's experts, it is welcome to contact them as mentioned in paragraph 3.1 below.*

3. Submission of further report

3.1 *The CTC and its experts stand ready to provide further clarification to Switzerland on any of the matters raised in this letter. The experts can be contacted through Ms. Simone Dempsey (telephone: +1 212 457 1081 or +1 212 457 1266; e-mail: dempsey@un.org or ctc@un.org).*

3.2 *The CTC would be grateful to receive further information on the questions and comments raised in this letter from Switzerland by 18 January 2005. As with previous reports, it is the intention of the CTC to circulate the further report as a*

document of the Security Council. Switzerland may, if it so desires, submit a confidential annex to the report for the attention of the CTC members only.

3.3 *The CTC may, in a future stage of its work, have further comments or questions for Switzerland arising from other aspects of the Resolution. It would be grateful to be kept informed of all relevant developments regarding the implementation of the Resolution by Switzerland.*